APPENDIX A.

IN THE COURT OF QUARTER SESSIONS OF THE PEACE IN AND FOR THE COUNTY OF DELAWARE, PENNSYLVANIA.

APPEAL OF SAXONY CONSTRUCTION COMPANY FROM REFUSAL OF THE BOARD OF SUPERVISORS OF MARPLE TOWNSHIP TO APPROVE A CERTAIN SUBDIVISION PLAN.	Misc. Q. S. Docket A-18 Page 437. June Sessions, 1953.

ADJUDICATION.

This is an appeal by a property owner from the refusal of the Board of Supervisors of Marple Township to approve without qualification a subdivision plan of its property. Testimony was taken before Ervin, P. J., on June 10 and 11, 1953. Both parties have submitted requests for findings of fact, conclusions of law and briefs in support thereof.

From the testimony, exhibits and requests we make the following

FINDINGS OF FACT.

1. Saxony Construction Company (hereinafter called owner) is a corporation organized and existing under the laws of the Commonwealth of Pennsylvania, with its principal place of business at 8 West Baltimore Avenue, Lansdowne, Delaware County, Pennsylvania.

2. The Township of Marple (hereinafter called township), is a township of the second class situate within Delaware County, Pennsylvania.

3. Saxony Construction Company is the legal owner of a certain tract or piece of ground situate in the Township of Marple, Delaware County, Pennsylvania, which is described more particularly on a certain plan called Section "K" Rose Tree Woods, made by G. D. Houtman,

Civil Engineers, a copy of which is filed of record in the case.

4. The tract contains forty-eight lots of at least 12,000 square feet each and is situated in the Trout Run Outfall West of Sproul Road and North of Cedar Grove Road in Marple Township.

5. Owner also owns an adjoining area which can be subdivided into five additional lots.

6. Section "K" of Rose Tree Woods is an area that is tributary to Trout Run and Whiskey Run, both of which drain into Crum Creek, a stream, the water from which is impounded by the Philadelphia Suburban Water Company for domestic and commercial purposes by the residents of Delaware County.

7. The tract, in most part, is located in R-1 zoning district which requires 12,000 square feet minimum area per lot. The appellant intends to build 3 bedroom, single family homes selling for $15,250.00.

8. On March 17, 1953, the said plan of Section "K" was approved by the Delaware County Planning Commission.

9. On April 6, 1953, owner submitted to township the aforesaid plan for approval in accordance with the Second Class Township Code as amended last by the Act of July 10, 1947, P. L. 1481, Section 17, et seq, and Ordinance No. 49-1, enacted and ordained March 17, 1949, of the Township of Marple.

10. At the said meeting on April 6, 1953, the said plan was approved by the Supervisors of Marple Township, provided that a sanitary sewer be installed by Saxony Construction Company within the boundaries of the streets appearing in the said plan, however, the supervisors agreed to issue building permits for the contruction of twelve homes in the tract on condition that streets and cartways should not be constructed until this appeal should be heard

and disposed of by final judgment by a court of final resort and jurisdiction.

11. It is the policy of Marple Township to require sanitary sewers for all homes to be constructed on a lot area of less than 20,000 square feet.

12. In R-C zoning district, which requires a minimum lot area of 20,000 square feet, the Supervisors of Marple Township permit the construction of homes with cesspools or septic tanks and without sanitary sewer lines.

13. At the present time, there are no sewage disposal facilities, such as trunk lines and laterals to which a sewage system installed in Section "K" can be connected.

14. The most feasible sewer connection for Section "K" is connection with the Central Delaware County Sewer Authority (hereinafter called authority) line.

15. The present terminus of the authority's pipe line is at the intersection of the Red Arrow Trolley Line and Crum Creek in Springfield Township.

16. To extend the present terminus for service to Section "K" requires construction of 6700 feet of pipe through Springfield and Nether Province Townships; then 5300 feet of pipe through Marple Township to the intersection of Crum Creek and Trout Run; then 12,000 feet of pipe to Section "K", a total distance of approximately 24,000 feet or four miles.

17. In the spring of 1952, Marple Township initiated proceedings to bring all the municipalities tributary to Crum Creek together for the purpose of studying sanitary sewer problems in that area and to find a solution thereto.

18. On July 22, 1952, representatives of Springfield Township, Newtown Township, Upper Providence Township, Marple Township, Nether Providence Township, Swarthmore Borough, representatives of the Central Delaware County Sewer Authority, and a representative of the

Delaware County Planning Commission, and of the State Sanitary Water Board met to confer about the sanitary sewer problems in the Crum Creek Watershed.

19. The said group, after organizing, requested Damon and Foster, Civil Engineers, the Delaware County Planning Board and the State Sanitary Water Board to make a joint engineering study of ways and means of extending the existing Crum Creek Interceptor sewer, owned and operated by the Central Delaware County Sewer Authority, up the Crum Creek Valley to reach the municipalities in the upper portion of the watershed.

20. Central Delaware County Sewer Authority has plans to extend the trunk line 5300 feet to the Springfield Township line but no starting date or commitments have been made by the authority.

21. The construction of a sanitary sewer from the present interceptor sewer terminus to Section "K" would require approximately from 120 to 140 days.

22. The present Central Delaware County Authority Sewage treatment plan, is designed to have a capacity to accommodate a 70,000 population.

23. The said interceptor sewer was designed and is sufficiently large to accommodate and meet the sanitary sewer requirements of the up stream areas.

24. Preliminary engineering and related studies for the extension of the said interceptor sewer are now being made and have progressed without delay.

25. At the present time there is no provision in the budget of township for the construction of a sewer line to accommodate Section "K."

26. At the present time there are no ordinances or minutes relating to legislation by township for the construction of a sewer line to accommodate Section "K."

27. At the present time township has not attempted to obtain rights of way for the construction of a sewer line to accommodate Section "K."

28. The number of homes in the Crum Creek Watershed has increased from approximately 100 in 1949, 715 in 1953 (at time of hearing) and is estimated to increase to a potential of 4400 houses with a 14,000 population warranted by present zoning.

29. The cost of a cesspool will be approximately $300.00.

30. The estimated cost of constructing sanitary sewers within Section "K" before streets are constructed is $10,100.00 or approximately $210.40 per each of the 48 lots within it.

31. If such installation is after the streets are constructed, the cost will be at least $1½ per foot of frontage additional, aside from the then damage to paved cartways.

32. Owner has graded a large portion of Section "K" to solid rock, pushing the earth to other areas within Section "K" to various depths up to six feet.

33. Before being disturbed by grading the geological structure of the soil consisted of a shallow layer of top soil, several feet of decomposed mica schist, below which is undecomposed mica schist, which is hard rock, massive, tight and very deep.

34. Test borings in Section "K" show that the layer of decomposed mica schist is very porous and that sewage from cesspools would descend rapidly to the top of the undecomposed mica schist, which is impervious; that the soil bacteria would have little chance to work on the sewage and that it would run along the top of the undecomposed mica schist in practically a pure state and would be discharged into Trout Run in a few hours.

35. The average soil in Section "K" absorbs water at the rate of approximately 21 gallons per square foot.

36. The average consumption of water in the average home is 150 gallons per day.

37. The area has developed so rapidly that it is reasonable municipal planning to require sanitary sewers to be constructed within the development and before streets are constructed, notwithstanding the fact that trunk lines are not yet beyond the planning stage.

38. Under all of the evidence, it is not unreasonable, arbitary or capricious to require the construction of sanitary sewers within a development prior to the approval of a subdivision plan.

DISCUSSION.

This in an appeal by a property owner from the refusal of the Board of Supervisors of Marple Township to approve without qualification a subdivision plan of its property. The qualification in question was the requirement by the Supervisors that a sanitary sewer be installed by the appellant within the boundaries of the streets appearing in the plan. The subdivision plan submitted showed the appellant was the owner of forty-eight losts of at least 12,000 square feet each, which are situated in the Trout Run Outfall Watershed. Trout Run and Whiskey Run both drain into Crum Creek, the water from which is impounded by the Philadelphia Suburban Water Company for domestic and commercial purposes by the residents of Delaware County. It is the policy of Marple Township to require sanitary sewers for all homes to be constructed on a lot area of less than 20,000 square feet. It does permit the construction of homes with cesspools or septic tanks if the lot area is in excess of 20,000 square feet. The authority upon which the Township acted can be found in Article XII-A, which was added to the Second Class Township Code by the Act of May 24, 1951, P. L. 370, Sec. 16.

Sec. 1206-A (c) (53 PS 19093-1256) is as follows:

"*Before approving* any subdivision plan for recording, the board of township supervisors shall either require that the necessary grading, paving and other street improvements, including, where specified by the board, curbs, sidewalks, street lights, fire hydrants, water mains, sanitary sewers and storm sewers, shall have been installed in strict accordance with the standards and specifications of the township, or that the township be assured by means of a proper completion guarantee, in the form of a bond or the deposit of funds or securities in escrow sufficient to cover the cost of the required improvements, as estimated by the township engineer or township supervisors, that the said improvements will subsequently be installed by the owner."

The appellant, however, contends that the requirement is arbitrary and unreasonable in this case because of the fact that at the present time there are no sewage disposal facilities such as trunk lines and laterals to which a sewage system installed in this property can be connected. The most feasible sewer connection is with the Central Delaware County Sewer Authority, the present terminus of which line is approximately four miles away. However, since the spring of 1952 Marple Township, together with other municipal subdivisions, the Delaware County Planning Commission and the Sate Sanitary Water Board, have been making joint engineering studies of the ways and means of extending the Central Delaware County Sewer. It is true that these studies are still in the planning stage but they are far beyond the "dream" stage. The enormous growth of the territory involved indicates that the extension of the sewer is a necessity and that it is only a question of time until it must become a reality. The question before the Court, therefore, is whether the Supervisors of Marple Township must wait until it becomes a reality before re-

quiring subdivisions to connect with it or whether they can require developers to be in a position to connect with it at that time. It is clear that it is not only cheaper to lay sewers before streets are constructed than it would be to open a street after it was once laid but it is also a wise precaution since the opening of streets disrupts traffic and impairs the operation of fire equipment, etc.

In order not to prevent the appellant from having the present use of its property, the Township has agreed to the construction of homes at the present time by the installation of cesspools as a temporary measure. The appellant complains that this is double expense. However, when we look into the future we find that this additional expense is only being accelerated. It is true that at that time the builder would probably be out of the picture and that the subsequent expense of the cost of a sanitary sewer would then devolve upon the buyers of the properties. However, any reasonable buyer with knowledge of the circumstances would certainly place a higher present value on a property where the sanitary sewer was already laid than he would for one which he knew would be subject to a future assessment for such facility.

Both parties have referred to the case of Appeal from Radnor Township Disapproval of Subdivision Plan, 40 Del. Co. Repts. 106. We do not believe that that case is controlling. It was held in that case that it is not reasonable for a municipality to require a developer to construct a trunk line beyond his own development. It is true that in its discussion the Court commented on the fact that there were at that time no connecting sewers and that the segment involved would be simply a dead end sewer and that there was no evidence as to when, if ever, the connecting sewers would be built. However, in the present case the evidence shows that it is only a question of time until the Central Delaware County Authority Sewer will be extended.

We therefore find that it is reasonable municipal planning to require sanitary sewers to be constructed within a

development before streets are constructed, notwithstanding the fact that connecting trunk lines are not yet beyond the planning stage. In this particular case there is an additional reason justifying the Township's position. The tract in question consists of a shallow layer of top soil, several feet of decomposed mica schist, below which is undecomposed mica schist, which is hard rock, massive, tight and very deep. The layer of decomposed mica schist is very porous and sewage from cesspools would descend rapidly to the top of the undecomposed mica schist, which is impervious. The soil bacteria would have little chance to work on the sewage and it would run along the top of the undecomposed mica schist in practically a pure state and because of its close proximity to Trout Run it would be discharged into Trout Run in a few hours.

It follows that under all the evidence it is not unreasonable, arbitrary or capricious to require the construction of sanitary sewers within the development prior to the approval of the subdivision plan submitted.

Conclusions of Law.

1. Because of the rapid development of the area in which the appellant's property is situated, it is reasonable municipal planning to require sanitary sewers to be constructed within the development and before streets are constructed, notwithstanding the fact the trunk lines are not yet beyond the planning stage.

2. Under all the evidence it is not unreasonable, arbitrary or capricious to require the construction of sanitary sewers within the development prior to the approval of a subdivision plan.

3. The appeal should be dismissed at the cost of the appellant.

DECREE NISI.

AND NOW, to wit: December 17th, A. D. 1953, upon consideration of the foregoing case, it is ordered, adjudged and decreed that the appeal of Saxony Construction Company from the refusal of the Board of Supervisors of Marple Township to approve a certain subdivision plan be and it is hereby dismissed.

The appellant shall pay the costs.

ORDER.

The Clerk of Court is directed to give notice immediately to the parties or their attorneys of record of the filing of the above Decree Nisi and if no exceptions be filed thereto within ten days after the service of such notice to enter the Decree Nisi as a final decree.

HAROLD L. ERVIN,
President Judge.

APPENDIX B.

IN THE COURT OF QUARTER SESSIONS OF THE PEACE IN AND FOR THE COUNTY OF DELAWARE, PENNSYLVANIA.

APPEAL OF SAXONY CONSTRUCTION COMPANY FROM REFUSAL OF THE BOARD OF SUPERVISORS OF MARPLE TOWNSHIP TO APPROVE A CERTAIN SUBDIVISION PLAN.	Misc. Q. S. Docket A-18 Page 437. June Sessions, 1953.

OPINION.

Saxony Construction Company, Appellant, owners of a tract of land in Marple Township, submitted under Ordinance No. 49 a plan for subdivision of Section "K" of said tract, known as Rose Tree Woods in said Township. The Township Supervisors approved said plan, upon condition that Saxony would construct local sanitary sewer lines within the boundary of the streets appearing on said plan. The Supervisors agreed to issue building permits for the construction of twelve houses in the tract, on condition that streets and cartways should not be constructed until this Appeal should be heard and disposed of by final judgment of a court of final resort. Saxony was permitted also to install cesspools or septic tanks to permit immediate use of these houses because there was no trunk line sewer to which the local sewer lines could be connected in the immediate future.

Saxony appealed to this court and complained of the Township's requirement that sanitary sewers be installed when the streets are laid. After hearing and submission of requests for Findings of Fact and Conclusions of Law this Court, Ervin P. J., adjudicated that under the facts it is reasonable municipal planning to require sanitary sewers to be constructed within the development, and the Appeal should be dismissed. Appellant filed Exceptions which have

now been argued before the court en banc with written briefs having been filed by both sides. These Exceptions are now ready to be disposed of.

This case does not involve a question of requiring the developer to construct a trunk line or interceptor sewer outside of the boundary lines of his own property. It deals with a requirement of the Township that before the streets and cartways are laid out and completely paved that local sanitary sewer lines be laid and constructed in the bed of each street. This requirement is the ordinary and usual one specified by most Townships in order that the subdivision plan may be approved and the said streets eventually taken over by the Township after all the utilities including local sanitary sewer lines have been installed and approved. The Appellant certainly could have no valid objection to the requirement that he construct local sanitary sewer lines in his development if there were no other facts in the case which said Appellant says should act to excuse him from constructing the sewer lines at this time. He contends that the requirement is arbitrary and unreasonable in this case because of the fact that at the present time there are no sewage disposal facilities such as trunk lines and laterals to which a sewage system installed in his property can be connected. The most feasible sewer connection is with the Central Delaware County Sewer Authority, the present terminus of which line is approximately four miles away. He further says that the area of his building lots is such that the use of cesspools or septic tanks is a sanitary and safe method of sewage disposal and that the public health would be properly safe-guarded, as the Delaware County Planning Commission has ruled that lots of 10,000 square feet or more in area can safely be equipped with on the site sewage disposal by use of cesspools and septic tanks. The Appellant's lots vary from 12,000 square feet up to approximately 20,000 square feet. The Appellant further says that it is unreasonable to require him to pay to construct sanitary sewer lines in the bed of the streets and also

to pay to construct a cesspool or septic tank on each property and that this amounts to double assessment or taxation for an improvement which does not service his property.

The authority upon which the Township acted is found in Article XIX-A, which was added to the Second Class Township Code by the Act of May 24, 1951, P. L. 370, Sec. 16, Sec. 1206-A-(c) (53 P. S. 19093, 1256). This provides that the Township, before approving any subdivision plan for recording, shall among other things require that . . . "sanitary sewers and storm sewers, shall have been installed in strict accordance with the standards and specifications of the Township, or that the Township be assured by means of a proper completion guarantee . . . that the said improvements will be installed by the owner".

There is no question, therefore, but that the Township had the authority to require the construction of the sanitary sewers under the provisions of the Code. The real question now is, can the Township require the local sewer lines to be built before a connecting trunk line or interceptor line is in existence, ready to serve the Appellant's property?

We are of the opinion that this question must be answered in the affirmative and the Exceptions heretofore filed by the Appellant must be dismissed. We will not discuss each exception separately as the answer to the problem is found in the fundamental law controlling the police power and its application to municipal improvements designed to protect the public health, safety, morals and welfare. The authority is recognized, but how it is exercised may at times be questioned.

The Pennsylvania Supreme Court has passed on this question in the case of Oil City Appl. v. Oil City Boiler Works, 152 Pa. 348, 353, in the following language:

> "As we have seen, the authority 'to cause sewers of all kinds to be constructed or reconstructed,' is vested exclusively in councils. In the exercise of their legislative judgment, enlightened by the skill and experience of the city engineer, they have an undoubted

> right to adopt a system of sewerage for each sewer district, and in doing so determine the location of main, as distinguished from merely local or lateral sewers. Whether a main sewer or a merely local or lateral one is necessary on a particular street or portion of a street is a question of engineering and legislative judgment, vested exclusively in councils, and not reviewable, except under extraordinary circumstances. . . ."

Whether or not a "proper" outlet has been provided for a proposed sewer is a matter left to the discretion of the village authorities, with which the court will not interfere by injunction restraining the construction of the sewer, unless such discretion has been grossly abused. Johnson v. Avondale, 1 Ohio C. C. 229.

A municipal board has the power to contract for the construction of a sewer, although it has no outlet except through a plan or system of which it is a part but which cannot be completed; since it is open to the board to adopt plans to dispose of sewage in some other mode, and may gather it for that purpose. Harney v. Benson, 113 Cal. 314, 45 Pac. 687.

The fact that each of the Appellant's properties will have to be serviced by two methods of sewage disposal is advanced earnestly by him as a reason why such requirements are unreasonable, unjust and oppressive. We cannot agree with the Appellant that he is being victimized or treated unfairly. Let us suppose that the Township relaxed its regulations as to local sewer lines and were to approve the subdivision plan provided cesspools or septic tanks only were permitted. The record in this case shows that the population growth in Marple Township is increasing at an exceptional rate and that within a reasonably short time the entire Township will have to be equipped with sanitary sewers. Eventually sewers will have to be installed in the tract of the Appellant and then the cartway of each street

would have to be excavated at increased cost and inconvenience. The individual property owner would then be liable for the increased cost of the sewer line at that time. Under the present regulations the sewer line will be installed in the streets before they are paved and will cost less and obviate the necessity of tearing up paved streets. The installation of the sewer line will add value to each property and every likely the cost of same can be absorbed in the sale price of each property.

A search of the cases has not disclosed a case in point on this specific question in Pennsylvania. However, a case closely in point was decided by the Illinois Supreme Court in City of Chicago v. Hirschl, 275 Ill. 60, 113 N. E. 899. The city ordained that in wide streets two water mains would have to be installed, one on each side. The reason advanced for this was that most wide streets would accommodate trolley lines and, to permit only one water main would result in inconvenience and hazard when the trolley tracks would have to be disturbed to reach the water main. In narrow streets only one water main was required by the city regulations. The plaintiff appealed the regulation as unreasonable, unjust, oppressive and discriminatory. The Supreme Court said no in the following language:

> "We cannot say that an ordinance requiring two water mains in a street is so unreasonable as to constitute an abuse of discretion by the council or an arbitrary imposition of an unjust burden upon the owners of property. The necessity, character and extent of the improvement are committed to the judgment of the city council, and their judgment is conclusive, unless the court is clearly satisfied that their action has been oppressive and without reasonable grounds. This case is not of that character. There may be a fair room for difference of opinion as to the desirability of having two water mains, but we cannot say that the decision of that question by the council was unreasonable, unjust or oppressive."

The record in the case at bar indicates that the Supervisors of Marple Township have not and are not now dealing with the Township sewer problem haphazardly. On the contrary, much consideration and intelligent application has been put forth in an endeavor to serve and protect the public interests and to prevent the occurence of future inequities. It certainly amounts to intelligent and proper municipal management to require a developer of land in the Township to install all of the required utilities, etc. that are usually a part and parcel of modern living. If the developer does not do this, then it remains for the unfortunate individual property owner to foot the bill at some future date and, usually at greatly increased cost.

The Exceptions filed by the Appellant to the Adjudication of this court heretofore handed down must be dismissed. Therefore the following is made:

FINAL DECREE.

AND NOW, to wit: this 27th day of April A. D. 1954, a Decree Nisi having been filed in the above case on December 17, 1953 and certain exceptions thereto having been filed on behalf of the Appellant Saxony Construction Company and the said matter having been argued before the Court en banc and after due consideration it is hereby ORDERED, ADJUDGED and DECREED:

(1) That the Exceptions filed in the said case be and the same are hereby dismissed, and;

(2) The appeal of said Saxony Construction Company from the refusal of the Board of Supervisors of Marple Township to approve a certain subdivision plan be and it is hereby dismissed.

The Appellant shall pay the costs.

(3) An exception is hereby allowed to Saxony Company to the action taken by the Court herein.

By THE COURT,
WM. R. TOAL,
Judge.

APPENDIX C.

No. 113

IN THE SUPERIOR COURT OF PENNSYLVANIA
PHILADELPHIA DISTRICT.

IN RE: APPEAL OF SAXONY CONSTRUCTION COMPANY FROM DECREE DISMISSING APPEAL FROM BOARD OF SUPERVISORS OF MARPLE TOWNSHIP.	No. 44 October Term, 1955.

Appeal from the Final Decree of the Court of Quarter Sessions of the Peace in and for the County of Delaware as of June Sessions, 1953, Misc. Q. S. Docket A-18, Page 437.

FILED: April 18, 1955.

Opinion by WOODSIDE, *J.*

This is an appeal by the Saxony Construction Company from the decree of the Quarter Sessions Court of Delaware County dismissing its appeal from the refusal of the board of supervisors of a second class township to approve a subdivision plan submitted to the supervisors by the company.

Paragraph (c) of Section 1206-A, added to The Second Class Township Law of May 1, 1933, P. L. 103 by the Act of May 24, 1951, P. L. 370 § 16, 53 P. S. § 19093-1256, provides that the board of township supervisors before approving any such plan "shall either require that the necessary grading, paving and other street improvements, including, where specified by the board, . . . sanitary sewers and storm sewers shall have been installed in strict accordance with the standards and specifications of the township" or

that the township receive guarantee that it will be done. Section 1140 of The Second Class Township Law, supra, as amended 53 P. S. § 19093-1140 provides for the approval by township supervisors of plans for roads to be constructed, opened or dedicated in the township.

When the construction company submitted its subdivision plan, which included roadways, to the Board of Supervisors of Marple Township the supervisors approved it *provided* that a sanitary sewer be installed by the construction company within the boundaries of the streets appearing in said plan. This amounts to a refusal *unless* the appellant complies with the conditions.

There is no sanitary sewer system in the immediate vicinity with which the sewer pipes required by the supervisors to be installed by the appellant could be connected, nor has the township made any legally binding commitments for the construction of, or connection with any such system. The sewers thus required could not be presently used.

The appellant, contending that under all the circumstances the requirement of the supervisors was arbitrary, capricious, unreasonable and without legal authority, appealed to the Quarter Sessions Court of Delaware County. Paragraph (f) of the aforesaid section 1206-A (53 P. S. § 19093-1256(f) provides for appeal as follows:

> "In any case where the board of township supervisors disapproves a subdivision plan, any person aggrieved thereby may, within thirty days thereafter, appeal therefrom, by petition to the court of quarter sessions of the county, which court shall hear the matter de novo and after hearing enter a decree affirming, reversing or modifying the action of the board, as may appear just in the premises. The court shall designate the manner in which notices of the hearing of any such appeal shall be given to all parties interested. The decision of the court shall be final."

Section 1141 of The Second Class Township Law, supra, as amended, 53 P. S. § 19093-1141 provides for an

appeal in practically the same language from refusal of the township supervisors to approve road plans under section 1140, supra.

The Quarter Sessions Court of Delaware County after hearing de novo, decree nisi and argument before the court en banc dismissed the appeal.

Both the aforesaid sections provide that the decision of the Quarter Sessions Court shall be final. This has the same effect as if the legislature had said that no right of appeal is permitted. White Township School Directors Appeal, 300 Pa. 422, 150 A. 744 (1930). Where the legislature expressly denies the right of appeal, this court's scope of review is limited to the question of the lower court's jurisdiction and the regularity of the proceedings; the merits of the controversy cannot be considered.

In Kaufman Construction Co. v. Holcomb et al., 357 Pa. 514, 517, 518, 519, 55 A. 2d 534 (1947) the present Chief Justice of our Supreme Court said: "Where a statute expressly denies the right of appeal to a court from the action of some agency of government, or to an appellate court from the decision of a court of original jurisdiction, to what extent is a disappointed claimant thereby prevented from obtaining a complete judicial review of his claim? After some vacillation by the courts in regard to the proper answer to that question (citing), the law is now reasonably clear, a distinction being made between the effect of a statute which merely fails to provide for a right of appeal and the effect of one which expressly denies that right . . . The distinction thus made has been reiterated and reinforced in a multitude of subsequent cases holding that where a statute expressly provides that there shall be no appeal the scope of appellate review is limited to the question of jurisdiction and the regularity of the proceedings; the merits of the controversy cannot be considered even though the interpretation given to the facts or the law by the governmental agency or the court below may have been erroneous. It is only where the statute is silent on the ques-

tion of appeal that a review by certiorari may be had 'in the broadest sense' and the court may consider the record, including the testimony, to determine whether the findings are supported by competent evidence and to correct any conclusions of law erroneously made."

This has been repeated as late as 1954 in Delaware County National Bank v. Campbell, 378 Pa. 311, 316, 106 A. 2d 416 (1954). See also Twenty-first Senatorial District Nomination, 281 Pa. 273, 126 A. 566 (1924); Grime v. Dept. of Public Instruction, 324 Pa. 371, 375, 188 A. 337 (1936).

The federal constitution does not require the legislature to give a litigant an appeal from a lower court. Hibben v. Smith, 191 U. S. 310, 317, 24 S. Ct. 88 (1903); Spaulding v. Douglas Aircraft Co., 154 F. 2d 419, 427 (1946).

The questions argued before us relate to the merits of the controversy and not the jurisdiction or the regularity of proceedings. There thus being no contention concerning the only questions we could consider,

The appeal is dismissed.

Rhodes, P. J. and Wright, J. concur in the result.

Ervin, J. took no part in the consideration or decision of this appeal.

Office - Supreme Court, U. S.
APR 13 19
HAROLD B. WILLEY, Clerk

IN THE
Supreme Court of the United States

October Term, 1955

No. 694

SAXONY CONSTRUCTION COMPANY,
Appellant

v.

BOARD OF SUPERVISORS OF MARPLE TOWNSHIP,
Appellee

MOTION TO DISMISS APPEAL

Appeal from the Court of Quarter Sessions of Delaware County, Pennsylvania.

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